

Fact Sheet: Institutions Series: The Extraordinary Chambers in the Courts of Cambodia



Institution: The Extraordinary Chambers in the Courts of Cambodia (the “ECCC”)

Snapshot: The ECCC was set up to try the senior most officials responsible for the crimes committed in Cambodia during the Khmer Rouge under international and Cambodian law. A “hybrid” tribunal composed of both national and international staff, the ECCC has been fraught with controversy and risks failing to impart a positive legacy on the Cambodian judicial system.

Introduction

This fact sheet provides an overview of the ECCC with regards to its judicial framework and recent controversy including allegations of political interference. This fact sheet also provides recommendations that take into account the legacy the institution will leave for the judiciary and rule of law in Cambodia. This fact sheet is written by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

The Extraordinary Chambers in the Courts of Cambodia

The ECCC, a United Nations (“UN”) backed Cambodian Court, was established to try the senior most officials responsible for crimes committed against the Cambodian people during the period of the Democratic Kampuchea, the government of the Khmer Rouge, from 17 April 1975 to 6 January 1979. The ECCC’s personal jurisdiction includes only senior members of the Democratic Kampuchea and individuals most responsible for the crimes committed. The ECCC’s subject matter jurisdiction includes murder, torture and religious persecution under the 1956 Cambodian Penal Code, as well as crimes under international law, namely genocide, crimes against humanity, breaches of the 1949 Geneva Convention, destruction of cultural property during an armed conflict and crimes against diplomats under the 1961 Vienna Convention.

In addition to applying both national and international law, another aspect of the ECCC’s “hybrid” nature is that both Cambodian and international judges, prosecutors and defense attorneys work at the Court. Unlike the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, the ECCC is located in the country where the crimes occurred, which is intended to encourage the Cambodian people to fully engage with the Court and to provide the Cambodian Judiciary with a balanced and legitimate judicial framework from which to model the domestic judicial system. Victims are able to participate in the trial and can lodge a complaint at the Office of Co-Prosecutors regarding crimes they feel have been committed, or can submit an application to become a civil party, enabling them to seek collective and moral reparations. In addition to the Royal Government of Cambodia (“RGC”), major donors include Japan, France, Germany, Australia, the United States, the United Kingdom and the European Union.

Cases at the ECCC

The ECCC has so far completed one case: Case 001. On 26 July 2010, Kaing Guek Eav, alias Duch, the former Chairman of Phnom Penh’s prison S-21 (Tuol Sleng) was convicted for crimes against humanity and grave breaches of the Geneva Conventions and sentenced to 35 years of imprisonment. His conviction was upheld and his sentence extended to life imprisonment in an appeal decision on 3 February 2012.

The ECCC is currently trying an additional three additional suspects in Case 002: Nuon Chea, Khieu Samphan and Ieng Sary for crimes against humanity, grave breaches of the Geneva Conventions and genocide. A fourth suspect, Ieng Thirith, has been found unfit to stand trial due to dementia and separated from the case, although this is due to be reexamined during 2012. Opening statements were made in November 2011. The case has been separated into a series of “mini trials” each concerning separate issues. The ECCC is currently hearing the first mini trial which concerns the forced movement of the population in 1975.

The International Co-Prosecutor has filed introductory submissions with regards to two additional cases: Cases 003 and 004, which concern an additional five suspects. Those cases are currently in the judicial investigation phase and have been subject to much controversy.

Recent Controversy

Despite the conclusion of the first case with Duch’s conviction, allegations of corruption and political interference continue to overshadow the work of the Court. In March 2012, Reserve International Co-Investigating Judge Laurent Kasper-Ansermet resigned from the ECCC, citing an inability to “properly and freely perform his duties” due to political interference. Judge Kasper-Ansermet’s resignation follows active opposition to investigations into Cases 003 and 004 by his Cambodian counterpart, Judge You Bunleng, which Judge Kasper-Ansermet claims has led to “a dysfunctional situation within the ECCC”. Judge You Bunleng opposed Judge Kasper-Ansermet’s authority to act in his capacity as Reserve International Co-Investigating Judge even prior to his arrival in Cambodia and, in particular, since the Supreme Council of Magistracy’s refusal to confirm his appointment as International Co-Investigating Judge – effectively stonewalling Judge Kasper-Ansermet’s efforts to undertake necessary investigative or judicial action in cases 003 and 004.

Conclusion/Recommendations

Judge Kasper-Ansermet’s resignation is the latest in a series of controversies with regards to the Court that threaten to undermine the promise of justice for the victims of the Khmer Rouge. In light of the state of the Cambodian judicial system, which lacks independence and which routinely violates fair trial rights, the ECCC has the potential to impart a legacy on Cambodia’s judicial system with regards to international standards of justice. Government interference in the ECCC’s judicial process, however, threatens this potential impact. The RGC must therefore refrain at all cost from interfering with the ECCC’s operations. To do otherwise would significantly call into question the Court’s rulings and taint the verdicts in the eyes of global society at large and, more importantly, the victims themselves.

The UN must undertake investigations into political interference at the ECCC, not only with respect to Cases 003 and 004 but where all proceedings are concerned. Depending on the findings, the UN should seriously consider its position with regards to the tribunal, including turning its back on the tribunal if warranted. If the UN fails to take steps to deal with the institutional damage that has been caused by political interference, the integrity of the ECCC will be severely undermined.

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